

### ***Remarks***

Reconsideration of this Application is respectfully requested.

Claims 14 and 18-21 are pending in the application, with claim 14 being the sole independent claim. Claims 1-13 and 15-17 were previously canceled. Claim 14 is sought to be amended. Claim 22 is sought to be added, where support for this claim can be found at least at para. [0058] of the published application. These changes are believed to introduce no new subject matter and their entry is respectfully requested.

Based on the above amendments and following remarks, Applicants respectfully request that the Examiner reconsider all outstanding rejections and that they be withdrawn.

### ***Rejections under 35 U.S.C. § 103***

In section 3 of the final Office Action dated April 9, 2007 (PTO Prosecution File Wrapper Paper No./Mail Date 20070321), claims 14 and 18-21 were rejected as allegedly being unpatentable under 35 U.S.C. § 103(a) over U.S. Patent Publication No. 200/0144284 to Burroughs *et al.* (hereinafter "Burroughs") in view of International Publication No. 01/17167 to Hebsgaard *et al.* (hereinafter "Hebsgaard"). Applicants respectfully traverse.

Amended claim 14 recites features that are distinguishable over the applied references. For example, claim 14 recites, among other features, the following:

a media access controller, including: a filter for receiving a bandwidth allocation message from a first communication device or a second communication device, wherein said filter processes authorization instructions to authenticate said bandwidth allocation message based on information in a register, wherein said filter includes **a primary filter** for receiving a bandwidth allocation message produced by the first communications device; and **a secondary filter** for receiving a bandwidth allocation message from the second communications device, wherein the

second communications device is linked to the first communications device over a slave interface. (Emphasis added.)

Burroughs and Hebsgaard, alone or in combination, do not teach or suggest such a media access controller.

Burroughs is directed to simultaneous broadcasts of a downstream channel by a plurality of cable modem terminating systems (CMTS) such that one CMTS may act as a backup to another CMTS in the instance the downstream channel becomes invalid. (*See* Burroughs, paragraph [0007].) A cable modem is configured to receive a primary downstream channel from a primary CMTS and an alternative downstream channel from an alternative CMTS, which acts as a backup to the primary CMTS. (*See id.*) When the primary downstream channel becomes invalid, the cable modem is able to switch to the alternative downstream channel without re-initialization. (*See id.*) Further, when switching to the alternative downstream channel, the cable modem retains and reemploys almost all of the same parameters that were established during the initialization of the primary CMTS (e.g., Internet Protocol (IP) address, transmission power levels, and configuration files). (*See id.*)

In contrast to the teachings of Burroughs, claim 14 of the instant application recites a primary filter and a secondary filter. The primary filter, in an embodiment, processes MAP messages by an upstream channel and decides whether to accept a MAP message for the designated upstream channel. (*See* Published Application, paragraph [0056].) The secondary filter, in an embodiment, sorts MAP messages by upstream channel and determines whether to accept the MAP message. (*See* Published Application, paragraph [0057].) In an embodiment, the primary filter and the secondary filter may both contain registers to enable the filters to decide whether to accept or reject

MAP messages. (*See Published Application*, paragraph [0058].) As illustrated in Figure 3 of the instant application, a MAP parse device 214 includes two distinct filters: a primary filter 308 and a secondary filter 312. Primary filter 308 may correlate to the primary filter and slave filter 312 may correlate to the secondary filter described above. (*See Published Application*, paragraphs [0056]-[0057].)

Burroughs does not teach or suggest a filter, as recited in amended claim 14 and illustrated by elements 308 and 312 in Figure 3 of the instant application. The Examiner alleges that receiver 301, shown in Figure 3 of Burroughs, teaches or suggests a primary filter and a secondary filter, as recited in claim 14. The Examiner states, in pertinent part, the following:

As for claim 14, Burroughs teaches a system for associating a plurality upstream channels with a plurality of downstream channels, all of said upstream channels and downstream channels operating on a communications device, comprising: (a) a media access controller a media access controller (Burroughs cable modem is DOCSIS compliant; it is inherent for a DOCSIS modem to have a MAC; [0023]) including:  
a filter (receiver 301 -- fig. 3) for receiving a bandwidth allocation message (configuration file; during initialization the CMTS sends a configuration file to its respective CM -- [0025]. Only the CMTS can assign the upstream channel in which the CM can communicate with the CMTS. Hence, a bandwidth allocation message is transmitted by assigning a particular upstream channel to a CM -- [0027].) from a first communication device (first CMTS; 103 -- fig. 1) or a second communication device (alternate CMTS), wherein said filter (301) processes authorization instructions to authenticate said bandwidth allocation message, wherein said filter includes **a primary filter (301)** for receiving a bandwidth allocation message produced by the first communications device (The receiver of the cable modem receives the configuration file and transmits information on its respective upstream channel accordingly -- [0025]); and a **second[ary] filter (301)** for receiving a bandwidth allocation message from the second communications device (In the event that the first CMTS fails, the alternate CMTS transmits its configuration information which the receiver 301 picks up and transmits accordingly -- [0028], lines 11+)...

(Office Action, 04/09/07, section 3, page 3.) (Emphasis added.) The Examiner also alleges on page 2 of the Advisory Action:

At the time when the primary CMTS (first communication device) is active, the primary filter (receiver 301) is used therein. Thereafter, in the event of failure of the primary CMTS (second communication device) becomes active, during which the primary filter used initially acts as the secondary filter.

It is inherent to the system of Burroughs that its filters receive bandwidth allocation messages in that the system supports DOCSIS and that it can detect downstream channels and communicates with the respective CMTS.

It appears from the response above that the Examiner continues to allege that receiver 301 is a primary filter and a secondary filter, as recited in claim 14 of the instant application. Applicants respectfully disagree.

First, Figure 3 of Burroughs refers to a cable modem 300 that includes a receiver 301, a transmitter 303, and a processor 305. (*See* Fig. 3 and para. [0044].) Receiver 301 in cable modem 300 is used to enable the cable modem to receive data from a cable modem termination system (CMTS). (*See* paras. [0022] and [0043].) Unlike the filter recited in amended claim 14 of the instant application, receiver 301 is located in the cable modem and not in the CMTS. As such, nowhere does Burroughs teach or suggest a "**cable modem termination system** for associating a plurality of upstream channels with a plurality of downstream channels, all of said upstream channels and downstream channels operating on a communications device" that includes a media access controller with a **filter**, as recited in amended claim 14. (Emphasis added.)

Second, even assuming *arguendo*, that the system in Burroughs does inherently include a filter, there is no evidence that makes it clear that such a filter necessarily includes a primary and secondary filter, as recited in claim 14 of the instant application.

"To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" (M.P.E.P. § 2112 IV, citing *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).) A primary filter and a secondary filter, as recited in claim 14, are not inherent in the system of Burroughs.

Notwithstanding the differences between Burroughs and the claimed invention, Applicants have amended claim 14 to further distinguish claim 14 from Burroughs. In particular, Burroughs does not teach or suggest, among other features, "a filter for receiving a bandwidth allocation message from a first communication device or a second communication device, wherein said filter processes authorization instructions to authenticate said bandwidth allocation message **based on information in a register**," (Emphasis added.)

For at least these reasons, Burroughs and Hebsgaard, independently or in combination, do not teach or suggest the particular features discussed above. Because the cited references do not teach or suggest this feature of claim 14, Applicants respectfully assert that claim 14 is patentable over the cited references.

Moreover, Applicants respectfully assert that claims 18-21, which depend from independent claim 14, are also patentable over Burroughs and Hebsgaard, alone or in combination, for at least reasons similar to those set forth above with respect to independent claim 14 and further in view of their own respective features.

Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejections based on the cited references and pass claims 14 and 18-21 to issuance.

***Conclusion***

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Robert Sokohl  
Attorney for Applicants  
Registration No. 36,013

Date: 3/24/08

1100 New York Avenue, N.W.  
Washington, D.C. 20005-3934  
(202) 371-2600

796328\_2.DOC